



SECTION X

CONSTRUCTION AUTHORIZATION AND LETTING

BID PROPOSALS

There are a number of federal provisions and documents that must be included in the bid proposals (See [Figure X-1](#)). The provisions are explained in detail in the *Missouri Standard Specifications for Highway Construction* and the *Required Federal Aid Provisions & Federal Wage Rates* publications furnished by MoDOT. Additional provisions are explained in the *Federal Highway Administration Form 1273* publication. All three of these documents are available free of charge on MoDOT's web site at <http://www.modot.org/>. The local agency can also contact the MoDOT district representative to obtain the current edition to these publications and determine if any other required documents that should be included in the bid proposal.

Federal Davis-Bacon prevailing wage rate determinations are required on all federal contracts except when the project is located off the federal aid highway system. Local projects that are located on roadways classified as local roads or rural minor collectors are exempt from the Federal Wage Rate requirement. However, other federal aid provisions still apply. If other federal funds are being used on a project located off the federal aid highway system, Davis-Bacon rates may be required by the other federal agency that provides funds. Davis-Bacon determinations may be obtained from MoDOT. The most current version of the federal wage rates will be provided to the local agency when the authority to advertise is granted. State wage rates should be requested by the local agency from the Industrial Commission, Missouri Department of Labor and Industrial Relations, Box 449, Jefferson City, Missouri 65102 or by calling (573)751-3403.

One of the provisions, which must be included, is the Disadvantaged Business Enterprise (DBE) Contract Provisions. All bidding documents must refer to 49 CFR Part 26. The local agency should contact the MoDOT district representative to obtain the current DBE contract provisions. The DBE provisions are located online at www.modot.org/business/externalcivilrights.htm. In order to assist the state in achieving goals, it will be necessary for the local agency to set up goals for socially and economically disadvantaged individuals (DBE's). A request must be made to the MoDOT district representative to establish a DBE goal for each project. For small projects or for projects that do not lend themselves readily to subcontract work, the goals may be reduced or even set at zero, but the provision should still be included. Part B of the DBE provisions shall be completed and submitted with the bid proposal or delivered by the low and second low bidder within three working days after the bid opening date. If any DBE's shown in Part B of the DBE provisions are not listed on the MoDOT approved listing, then that DBE's work will not be counted as DBE participation work and may be cause for rejection of the bid. If the bidder does not meet the established goal, award of contract can be made only if this bidder can document and demonstrate good faith effort to meet the goals. The good faith effort will be reviewed and approved by MoDOT. DBE's must be listed on the MoDOT approved listing at the time of the contract letting (bid opening).

According to the Federal Highway Administration, Title 23 and 29 prohibit any provision on federal-aid projects unless it meets federal requirements. Therefore, any provision setting a DBE/MBE/WBE goal cannot be allowed, unless that program meets the requirements of 49 CFR Part 26. Specifically, Part 26 does not permit separate goals for minorities and females without a



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specific authorization and waiver. Further, federal regulations state that any amount of federal money used on a project makes that project federally funded and the prohibition is applicable.

Therefore, no project funded by federal money, whether administered by MoDOT or any other entity receiving federal funds, can contain an MBE or WBE goal, even if mandated by city ordinance. Any project submitted with such a goal will not be approved for federal funds.

The LPA may include warranty provisions in construction contracts in accordance with the following:

Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for Federal participation shall not be covered.

All warranty requirements and subsequent revisions shall be submitted to MoDOT for advance approval.

No warranty requirement shall be approved which in the judgment of MoDOT, may place an undue obligation on the contractor for items over which the contractor has no control.

Routine warranties or guarantees provided by a manufacturer are valid. Contractors' warranties or guarantees providing for satisfactory in-service operation of mechanical and electrical equipment and related components for a period not to exceed 6 months following project acceptance are permissible.

A copy of the Corps of Engineers 404 Permit, Farmland Conversion Impact Statement, Section 106 clearance from the Department of Natural Resources, and the FEMA Flood Plain Development Permit should be included in the bid proposal.

The amount of project costs that will be eligible for federal participation will be reduced by the amount of any liquidated damages assessed against the contractor. In determining the amount eligible for participation, the amount of liquidated damages will first be deducted from the amount of construction engineering claimed, and then from construction costs if the amount of liquidated damages exceeds the amount of construction engineering. In determining this deduction, a minimum amount will be used as shown in the following table. Local agencies may therefore wish to set the amounts of liquidated damages either equal to or greater than this schedule in order not to lose any federal participation. The liquidated damage rate must be included in the bid proposal.



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SCHEDULE OF DEDUCTIONS FOR EACH DAY OF OVERRUN IN CONTRACT TIME

ORIGINAL CONTRACT AMOUNT (OR THE ENGINEER'S ESTIMATE OF THE TOTAL CONSTRUCTION COST)

| <u>From More Than</u> | <u>To and Including</u> | <u>Assessment per day</u> |
|---------------------------|-----------------------------|---------------------------|
| \$ 0 | \$ 25,000 | \$ 100 |
| 25,000 | 50,000 | 200 |
| 50,000 | 100,000 | 300 |
| 100,000 | 500,000 | 400 |
| 500,000 | 1,000,000 | 700 |
| 1,000,000 | 2,000,000 | 1,000 |
| 2,000,000 | 3,000,000 | 1,500 |
| 3,000,000 | 4,000,000 | 1,700 |
| 4,000,000 | 6,000,000 | 2,300 |
| 6,000,000 | 8,000,000 | 2,700 |
| 8,000,000 | 10,000,000 | 3,000 |
| 10,000,000 | 12,000,000 | 3,200 |
| 12,000,000 | 14,000,000 | 3,500 |
| 14,000,000 | 16,000,000 | 4,000 |

The bid proposal must also stipulate that the prime contractor on a project must perform with its own organization, contract work amounting to not less than 30% of the total original contract price. When MoDOT's standard specifications are being used, then the prime contractor must have a fully responsive contractor questionnaire on file with the MHTC at least 7 days prior to the bid opening date. To get on the approved contractor listing prior to letting, click on the following link: http://www.modot.org/pdf/business/Contractor_Questionnaire.pdf. The following sentence could be inserted into the contract that would allow contractors not on the listing to submit a bid for the project. "Section 102.2 of the Missouri Standard Specifications for Highway Construction will be waived for this project." This statement should only be used on proposed improvements that do not contain roadway or bridge construction (i.e., landscaping, sidewalks, bicycle path, etc.). If this waiver is not inserted in the contract and the bidder is not on MoDOT's listing, the bidder cannot be awarded the project. The project may be awarded to the second low bidder.

The bid proposal must also stipulate that second tier subcontracting will not be permitted on the project. It will be the responsibility of the contractor to insure that subcontractors do not subcontract any portion of the work.

If the specifications call for contractor furnished borrow, the contractor must ensure that all environmental clearances have been approved for use of the borrow site. To eliminate possible delays, the local agency shall specify in the engineering services contract that a proposed borrow site be investigated. Additionally, the contractor must present the temporary erosion control measures anticipated for the borrow site to the MoDOT district representative for approval.



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Figure X-2 represents a provision that must be included in the bid proposal for projects specifying contractor furnished borrow.

The following Title VI Civil Rights Assurances notification must be included in the invitation to bidders in the front of all bid proposals and in any magazine advertisements, newspaper advertisements, invitations for bids mailed to prospective bidders and suppliers and any other means of obtaining submission of bids for work or materials.

"The County/City/Organization of _____ hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

CONTRACTOR LETTING AND AWARD

The local agency must submit PS&E, all environmental clearances, and the Right-of-way clearance certification statement to MoDOT so that construction authorization may be obtained. This is necessary before a project can be advertised for letting. Right-of-way must be cleared, and railroad and utility agreements must be executed. Additionally, any supplemental agreements pertaining to the preliminary engineering of the project must be submitted prior to construction authorization. Local agency-state agreements must be executed before construction authorization will be given.

PS&E approval, DBE goal approval, and construction authorization will enable the local agency to advertise for bids. Competitive bidding will be required except where work by local agency forces or utility companies has been authorized. All bids must be publicly opened and read, and award made to the lowest responsible bidder, provided acceptable bids are received.

In order to satisfy federal requirements projects must be advertised one time at least 21 days before the bid opening. This advertisement should be placed in a newspaper having a general circulation in the area of the project. Additionally, the local agency should ensure that requirements of state statutes governing local agency operations are also satisfied. The local agency should advise MoDOT of the first advertising date and the time and location of the bid opening as soon as these are determined. A sample advertisement is shown as [Figure X-3](#).

Each bidder shall file an anti-collusion statement at the time of the bid. The anti-collusion statement will be provided by the local agency to each prospective bidder. Failure to submit the anti-collusion statement as part of the bidding documents will make the bid non-responsive and not eligible for award consideration. (See [Figure X-4](#) for an anti-collusion statement example.)

MoDOT concurrence must be obtained prior to the award of contract.

The request for MoDOT concurrence should be accompanied by:

- Four copies of a cover letter from the sponsor requesting MoDOT concurrence in award.
- Four copies of a tabulation of all bids received.



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- Four copies of the executed anti collusion statement from the first and second low bidder.
 - Four copies of Part A and Part B of the Disadvantaged Business Enterprise Contract Provisions for the first and second low bidder.
 - Four copies of an itemized bid form from the first and second low bidder (with asterisks placed by the items that will be preformed by the DBE).

Justification should be provided with any request for concurrence in award if the lowest responsible bid is more than 10% higher than the project estimate.

Following the award of contract, the local agency should submit two fully executed copies of the contract to MoDOT. This submittal should include complete contracts similar to the bid proposals, with the addition of signatures, insurance, and bond forms.

No work is to be initiated until federal funding has been approved (obligated) by FHWA and MoDOT has notified the Local Agency to proceed.